IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FIDELITY AND GUARANTY LIFE INSURANCE COMPANY	:	
Plaintiff,	:	
v.	:	
LUCILLE HARROD, *et al.*	:	Civil No. CCB-05-2732
Defendants	:	
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SETTLEMENT FUNDING, LLC d/b/a PEACHTREE SETTLEMENT FUNDING,	:	
Cross-complainant	:	
v.	:	
LUCILLE HARROD,	:	
and	:	
FIDELITY AND GUARANTY ASSIGNMENT CORPORATION	:	
and	:	
RAPID SETTLEMENTS, LTD.	:	
Cross-Defendants	:	

MEMORANDUM

Now pending before the court are motions by Settlement Funding, LLC, d/b/a Peachtree

Settlement Funding ("Peachtree") and Fidelity and Guaranty Life Insurance Company ("F & G Life") for attorney's fees, pursuant to an order of this court imposing sanctions against Rapid Settlements, Ltd. ("Rapid"). Also pending is Rapid's motion to alter or amend the court's September 27, 2007 order imposing such sanctions. The parties have fully briefed the motions and no hearing is necessary. *See* Local Rule 105.6. For the reasons articulated below, Rapid's motion to alter or amend judgment will be denied, and sanctions will be awarded against Rapid, to Peachtree in the amount of $15,719.59 and to F & G Life in the amount of $8,837.80. Rapid's counsel will be ordered to show cause as to why counsel should not partially bear the cost of the sanctions.

BACKGROUND

Under the terms of an unrelated lawsuit, Lucille Harrod ("Mrs. Harrod") became entitled to receive periodic payments under the terms of a structured settlement. The payments, in the amount of $512.05 a month, were to be paid by Fidelity and Guaranty Assignment Corporation ("F & G Assignment"). To fulfill this obligation, F & G Assignment purchased an annuity from F & G Life. F & G Life agreed to make the settlement payments directly to Mrs. Harrod.

In 2003, Mrs. Harrod entered into an agreement with Peachtree to sell and assign her right to the F & G Life payments. On June 2 of that year, Peachtree and Mrs. Harrod entered into the Absolute Assignment and Article 9 Security Agreement ("First Peachtree Agreement"), under which Mrs. Harrod assigned 120 of the monthly settlement payments, beginning on September 1, 2003 and ending after the payment on August 1, 2013. Under Florida Statute § 626.99296 ("Florida Transfer Statute"), a court must authorize any proposed transfer of

settlement payment rights before such a transfer may become effective. To comply with the statute, Peachtree filed an application in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida; that court approved the transfer on July 23, 2003. The following year, Mrs. Harrod and Peachtree entered into a second agreement ("Second Peachtree Agreement"), under which Mrs. Harrod agreed to transfer the right to 84 additional payments, covering the period between September 2013 and August 2020. That agreement was approved by the Florida state court on October 7, 2004.

The dispute in this case arises from an event that Rapid alleges occurred between the first and second of Peachtree's agreements with Mrs. Harrod. In April 2004, Mrs. Harrod entered into an agreement with Rapid to assign her rights to what were essentially the same payments as would later be covered in the second Peachtree agreement. Rapid claims that in exchange for those rights, it advanced Mrs. Harrod one thousand dollars. According to Rapid, Mrs. Harrod then refused to proceed with the transfer. At no time, however, did Rapid seek or obtain court approval for the transfer or the taking of a security interest in the settlement payments, as required under Florida law. Instead, Rapid initiated an arbitration proceeding in Texas against Mrs. Harrod, naming F & G Life and F & G Assignment as parties to that proceeding.

F & G Life filed an interpleader action in this court in October 2005 in order to determine its obligations regarding the Harrod payments. Judge Motz ordered that Peachtree, Rapid, F & G Assignment and Mrs. Harrod interplead and settle among themselves the conflicting rights to the second group of settlement payments; he enjoined any further arbitration proceedings in the matter. Meanwhile, Peachtree filed a cross-complaint against Mrs. Harrod and Rapid, seeking a declaration that its interest in the settlement payments was valid and proper. Rapid moved to

dismiss the cross-complaint; this court denied that motion on May 25, 2006. Five months after the denial, Rapid moved for reconsideration; the reconsideration motion was deemed untimely and a motion to strike granted. Peachtree moved for summary judgment in September of 2006, and summary judgment was granted in Peachtree's favor.

On September 27, 2007, this court granted Peachtree's motion for sanctions against Rapid, on the ground that Rapid had pursued two entirely meritless claims before this court: first, that this court lacked jurisdiction over the case because the interpleader action did not give rise to supplemental jurisdiction; second, that it obtained a valid security interest in the settlement payments prior to the second Peachtree agreement. This court awarded sanctions against Rapid and its counsel in an amount to be determined, and ordered Peachtree and F & G Life to submit documentation of their attorney's fees and costs. Shortly thereafter, Peachtree moved for its attorney's fees in the amount of $22,396,[1] and F & G Life submitted documentation supporting its claim for $15,372.75 in attorney's fees and costs. Rapid moved to alter or amend the September 27th ruling, claiming that because Peachtree had moved for sanctions only against Rapid Settlements, no sanctions could be imposed upon Rapid's counsel, and no sanctions could be awarded to F & G Life. Rapid also claims that Peachtree's claim for $29,443.70 is unsupported by Peachtree's documentation.

ANALYSIS

Rule 11 of the Federal Rules of Civil Procedure states that:

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[1]The amount claimed by Peachtree has since increased (factoring in the fees and costs incurred since the October 18th submission); it is now $29,443.70. (*See* Memorandum, docket entry no. 81.)

(c) Sanctions.

> (1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

Fed. R. Civ. P. 11(c)(1).[2] The party seeking sanctions must make a motion "separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2). The motion must be served on the opposing party, and 21 days must then elapse, during which "the challenged paper, claim, defense, contention or denial [may be] withdrawn or appropriately corrected." *Id.* If the court determines a sanction is appropriate, "the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion." *Id.* A court may also order, sua sponte, "an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." Fed. R. Civ. P. 11(c)(3).

The Rule also discusses what constitutes an appropriate sanction: it must be "limited to what suffices to deter repetition of the conduct," but may include nonmonetary sanctions, payment of a penalty to the court, or an order directing the sanctioned party to pay all or part of the movant's reasonable attorney's fees and other expenses "directly resulting from the violation." Fed. R. Civ. P. 11(c)(4). "If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion." Fed. R. Civ. P.

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[2]Rule 11 was amended in 2007; according to the Advisory Notes, the changes were stylistic and not substantive. As such, this opinion refers to the version of the Rules currently in effect.

11(c)(2).

Sanctions Against Rapid's Counsel

Rapid first claims that "[n]o sanction was requested against counsel in either the Rule 11 letter or the Motion," and therefore, this court may not sanction Rapid's counsel for certifying frivolous claims. (Mot. Alter/Amend J. 2.) Rule 11 states that "[b]y presenting to the court a pleading, written motion, or other paper . . . an attorney or unrepresented party certifies that" the submission is not being made for an improper purpose, and that the claims contained therein are warranted by existing law. Fed. R. Civ. P. 11. While the court's order for F & G Life and Peachtree to submit their requests for costs arguably serves the same purpose, Rapid's counsel will nonetheless be ordered to show cause within 10 days why the conduct described in the September 27, 2007 Memorandum and Order does not warrant sanctions against counsel.

Amount of Sanctions Awarded to Peachtree

Rapid also argues that the amount of fees and costs claimed by Peachtree is excessive, because Peachtree should only be awarded the amount it expended to prepare the Rule 11 safe harbor letter, motion and responses. Specifically, Rapid claims that "[t]he appropriate amount under Rule 11 which can be allowed is to allow the fees and expenses for the Memorandum and Rule 11 letter and time thereafter, all of which relates to the Motion for Sanctions and briefing on that issue." (Rapid Response 14.) Rapid overlooks the fact that Rule 11 sanctions are imposed to deter reoccurrence of the sanctionable behavior - in this case, Rapid's presentation to this court of arguments which had been rejected before and which it knew were without legal

merit, resulting in unnecessary delay and needless increase in the cost of litigation. Those arguments had been propounded, and Peachtree had been forced to refute them, from very early on in this case. (*See* Rapid Mot. Dismiss, docket entry no. 17.) Moreover, Rapid had disregarded court deadlines, again increasing cost and expense to the other parties.

Rule 11 "requires that 'an appropriate sanction' be imposed upon those who violate its requirements." *In re Kunstler*, 914 F.2d 505, 522 (4th Cir. 1990). The issuing court should impose the "least severe sanction adequate to serve the purposes of Rule 11," *id.*, which first and foremost include deterrence of future litigation abuse, *Brubaker v. City of Richmond*, 943 F.2d 1363, 1374 (4th Cir. 1991). Indeed, the "amount of a monetary sanction should always reflect the primary purpose of deterrence," *Kunstle*r, 914 F.2d at 523. When establishing the amount of a sanction, "[t]he amount of expense borne by opposing counsel in combatting frivolous claims may well be an appropriate factor for a district court to consider in determining whether a monetary sanction should issue and if so, in what amount." *Id.* at 522. The sanction is "generally to pay the opposing party's 'reasonable expenses . . . including a reasonable attorney's fee.'" *Id.* at 523 (quoting Fed. R. Civ. P. 11).

When a district court orders a party to be sanctioned, the court "should explain the basis for the sanction so a reviewing court may have a basis to determine whether the chosen sanction is appropriate." *Id.* The four factors that a district court should consider are "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation." *Id.* (citing *White v. General Motors Corp.*, 908 F.2d 675 (10th Cir. 1990).

Reasonableness of Attorney's Fees

The sanction should only include "attorney time which is in response to that which has been sanctioned," but should "never be based solely on the amount of attorney's fees claimed by the injured party" without taking into account the other factors. *Id.* It should be noted that "'reasonable' does not necessarily mean actual expenses and attorney's fees." *Fahrenz v. Meadow Farm P'ship*, 850 F.2d 207, 211 (4th Cir. 1988). The issuing court "need not do more in its order than state whether the fee is reasonable. Such a statement indicates that the court has undertaken an analysis of the reasonableness of the fee." *Brubaker,* 943 F.2d at 1387. Where a determination is made that "a large monetary sanction should issue, and the amount is heavily influenced by an injured party's fee statements," however, "the court should permit the sanctioned party to examine and contest the injured party's fee statements as an aid to the court's own independent analysis of the reasonableness of the claimed fees." *Kunstler*, 914 F.2d at 524. Here, Rapid has had just such an opportunity; indeed, Rapid has filed papers in opposition to the attorneys' fees sought by both F & G Life and Peachtree and claims to have "review[ed] the sequence of events in the case and the billing records carefully." (*See* docket entry nos. 76, 77.)

In its response to the September 27th sanctions order, Peachtree has claimed $29,443.70 in attorney's fees and costs. (*See* Memorandum, docket entry no. 81.) To determine the reasonableness of a sanction based on attorney's fees, this court looks first to the series of pleadings and responses that formed the basis of the Rule 11 motion. Examining the attorney's fees and costs incurred by Peachtree after the motion to dismiss, the court finds they are reasonable and directly traceable to Rapid's attempts to delay resolution of the interpleader action. After F & G Life filed the action before this court, seeking a determination of the rights

of the parties with regards to Mrs. Harrod's annuity payments, Peachtree filed a crossclaim, seeking a declaration that Rapid had no interest in a set of payments that had also been sold to Peachtree, (*see* Crossclaim, docket entry no. 16). Rapid then filed a motion to dismiss, in which it presented to this court the legal arguments which would later subject it to sanction: namely, that this court had no jurisdiction over the case, and that Rapid had obtained a valid security interest in the payments prior to Peachtree's second agreement with Mrs. Harrod. (*See* Mot. Dismiss, docket entry no. 17.) Those arguments - which had been resoundingly rejected by every court to which they had been presented - served only to increase the delay and expense for the opposing parties.

Peachtree submitted an opposition to Rapid's motion to dismiss on April 3, 2006. (*See* docket entry no. 21.) After Rapid's motion was denied, Peachtree sought to obtain a judgment of default against Rapid for not having submitted its answer within the appropriate timeframe under the Federal Rules of Civil Procedure. (*See* docket entry no. 33.) Upon receiving Rapid's answer to the crossclaim, Peachtree moved for summary judgment, arguing that Rapid's purported security interest was invalid for failure to obtain court approval of the transfer of settlement payments. (Docket entry no. 36.) Rapid responded to the summary judgment motion, again arguing that it had obtained a perfected security interest in the payments, (*see* docket entry no. 40); it then filed a motion for reconsideration of the motion to dismiss, essentially restating its previous arguments, (*see* docket entry no. 41). Peachtree moved for sanctions in February 2007. The motion for reconsideration was grossly untimely, and was struck. (*See* docket entry no. 50.) The court granted Peachtree's motion for summary judgment on March 6, 2007. (*See* docket entry no. 51.) As such, it appears that the majority of Peachtree's work on this case between the

preparation of the answer filed on March 1, 2006, and its most recent filing in this case is directly attributable to the behavior which was subjected to sanctions. The total amount, calculated below, is reasonable.[3]

Minimum Necessary to Deter

Because the primary purpose of sanctions is to deter litigation abuse, any sanction ordered must be the minimum that will serve to adequately deter the undesirable behavior. Rapid, unfortunately, has chosen to pursue a litigation strategy that involves propounding the same frivolous arguments in courts across this country.[4] Throughout the interpleader action, Rapid had been warned of the defects in its legal position, yet it insisted on maintaining that position with no regard to mounting delays and expense. Given this insistence, it appears that a heavy sanction is necessary in order to deter Rapid from repeating the same arguments before yet another court.

Ability to Pay

Rule 11 sanctions "are analogous to punitive damages," and the "financial condition of the offender is an appropriate consideration in the determination of punitive damages." *Kunstler*, 914

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[3]From the evidence submitted by Peachtree, it appears that Peachtree's law firm billed the following hours and at the following rates for that time period:

Elyse L. Strickland, Shareholder, 48.9 hours, $280-315 per hour, total $14,602.00
Greg R. Saber, Associate, 35.7 hours, $250-275 per hour, total $9,257.50
Christine A. Evans, Paralegal, 14 hours, $125-140 per hour, total $1856.50
Sherry-Maria Shenouda, Paralegal, 8.5 hours, $115 per hour, total $977.50
Meredyth S. Cooper, Associate, 2 hours, $195 per hour, total $390.00

Expenses (online legal research, postage): $2,360.20
Total: $29,443.70

[4]This court noted the judgments of some of those courts, and the unanimity with which they have rejected Rapid's arguments, in its September 27th sanctions order. (See docket entry no. 64 at 10.)

F.2d at 524. However, the burden is upon the party being sanctioned to come forward with evidence of an inability to pay. *Id.* This court's September 27th sanctions order put Rapid on notice as to the magnitude of financial sanction the court was contemplating, yet it has submitted no evidence detailing an inability to pay.

Other Factors Related to the Severity of the Rule 11 Violation

Courts may consider a number of other factors in determining an appropriate sanction under Rule 11, among them the offending party's "history, experience, and ability, the severity of the violation, the degree to which malice or bad faith contributed to the violation, [and] the risk of chilling the type of litigation involved." *Id.* at 524. Here, to the extent that these factors are relevant, they point towards a harsher sanction for Rapid's behavior. This court could identify, in its sanctions order, no court which had accepted Rapid's attempt to use arbitration proceedings to circumvent state statutes requiring court approval of structured settlement payment transfers. Rapid could - and, one assumes, did - know better than to attempt to derail the interpleader action before this court with those arguments..

Sanctions Awarded to F & G Life

In its Motion for Sanctions, Peachtree also requested that the court award sanctions to F & G Life, the party which originally brought the interpleader action before this court. That motion, appropriately served on Rapid 21 days before filing in this court, requests that the court direct Rapid to pay for "the fees incurred by Fidelity and Guaranty Life Insurance Company," so that those fees would not be deducted from the interpleaded funds which were the subject of the original dispute. (Mot. Sanctions, docket entry no. 48.) Rapid cannot now claim that it was not given

notice as to the possibility of this sanction - though it apparently does, (*see* Response to Request for Fees, docket entry no. 76). The same analysis that was applied to Peachtree's request for funding is appropriate for the request by F & G Life[5]: the majority of work performed between the filing of the complaint for interpleader and the date of the last submitted fee invoice was the result of Rapid's attempts to delay the proceedings and increase the cost of litigation for all parties.[6]

CONCLUSION

For the reasons stated above, Rapid's motion to alter or amend the judgment of this court will be denied. Sanctions will be awarded to Peachtree in the amount of $29,443.70 and to F & G Life in the amount of $12,440.05. Rapid's counsel will be ordered to show cause in 10 days why these sanctions should not be borne jointly by counsel. A separate order follows.

April 15, 2008
Date

/s/
Catherine C. Blake
United States District Judge

[5]From the evidence submitted by F & G Life, it appears that F & G Life's law firm billed the following hours and at the following rates for that time period:

Stephen H. Kaufman, 43.8 hours, $250-365 per hour, total $11,076.00
Max S. Stadfeld, 15.3 hours, $150-165 per hour, total $2,341.50
Minus 10% courtesy discount, adjusted total $12,075.75

Expenses (filing fee, messenger service, process server): $364.30

Total: $12,440.05

[6]It would not be reasonable to permit the fees incurred prior to the preparation of the complaint for interpleader to be the basis of sanctions. Those interactions between Rapid and F & G Life, as frustrating as they may have been for F & G Life, were not intended to increase the cost of any existing litigation and should not be incorporated into the sanction.

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SETTLEMENT FUNDING, LLC d/b/a PEACHTREE SETTLEMENT FUNDING,	:	
Cross-complainant	:	
v.	:	
LUCILLE HARROD,	:	
and	:	
FIDELITY AND GUARANTY ASSIGNMENT CORPORATION	:	
and	:	
RAPID SETTLEMENTS, LTD.	:	
Cross-Defendants	:	

ORDER

In accordance with the foregoing Memorandum, it is hereby:

ORDERED, that Rapid Settlements, Ltd.'s Motion to Alter/Amend Judgment (docket

entry no. 68) is **DENIED**, and it is further,

ORDERED, that Fidelity and Guaranty Life Insurance Company's Motion for Attorney Fees (docket entry no. 69) is **GRANTED**, in the amount of $12,440.05, and it is further,

ORDERED, that Settlement Funding, LLC d/b/a Peachtree Settlement Funding's Response in Support of Motion for Attorney Fees (docket entry no. 70; docket entry no. 81) is **GRANTED**, in the amount of $29,443.70, and it is further,

ORDERED, that Rapid's counsel show cause within 10 days why these sanctions should not be borne jointly by counsel.

April 15, 2008
Date

/s/
Catherine C. Blake
United States District Judge